

1 UNITED STATES DISTRICT COURT
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DISTRICT OF NEVADA

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4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 RASHAD CRAIG TANNER,

8 Defendant.

Case No. 2:18-CR-00266-APG-EJY

ORDER

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10 Pending before the Court is Rashad Tanner's Motion for Temporary Release for Defendant
11 to Attend Surgery and Visit Grandmother (ECF No. 94). The Court has considered Defendant
12 Tanner's Motion and the Government's Response (ECF No. 95). Because Tanner states that his
13 daughter will have surgery on her adenoids on November 5, one week from today, the Court issues
14 this Order before the due date for a reply brief.

15 **I. Summary of Motion and Opposition**

16 In his Motion, Defendant states that he is seeking relief pursuant to 18 U.S.C. § 3142(i) to
17 be with his daughter who is having adenoid surgery and to visit his grandmother who he states is on
18 life support. ECF No. 94 at 2. Defendant asks to be released into the custody of his mother, Viola
19 Wilson, who Defendant states will provide "the Court with a measure of security regarding Mr.
20 Tanner's future appearance and the safety of the community." In the alternative, Defendant states
21 he could be transported to UMC Hospital on two occasions—once when his daughter has surgery
22 and once to visit his grandmother.

23 In opposition to Defendant's Motion, the Government argues that Defendant bears the
24 burden of demonstrating release under 18 U.S.C. § 3142(i) is appropriate. The Government also
25 argues that visiting with family is not a compelling reason for Defendant's release and, therefore,
26 Defendant has not met his burden. The Government states that when considering whether Defendant

1 has met his “compelling reason” burden, the Court should balance the reasons provided for release
 2 against the other factors courts consider “under the statutory framework of 18 U.S.C. § 3142.” ECF
 3 No. 95 at 3.

4 **II. Discussion**

5 The Bail Reform Act states, in relevant part: “[t]he judicial officer may, by subsequent order,
 6 permit the temporary release of the person, in the custody of a U.S. Marshal or another appropriate
 7 person, to the extent that the judicial officer determines such release to be necessary for the
 8 preparation of the person’s defense or for another compelling reason.” 18 U.S.C. § 3142(i). While
 9 “compelling reasons” have recently been vociferously argued due to the challenges posed by
 10 COVID-19, there is little case law to which the Court may look for guidance when applying § 3142(i)
 11 to the facts presented by Defendant.

12 As the Government points out, Defendant bears the burden of establishing compelling
 13 reasons for his temporary release under § 3142(i). *United States v. Boatwright*, __ F.Supp.3d __,
 14 2020 WL 1639855, at * 4 (D. Nev. Apr. 2, 2020) (internal citation omitted). Further, courts grant
 15 relief under § 3142(i) “sparingly to permit a defendant’s release where, for example, he is suffering
 16 from a terminal illness or serious injuries.” *United States v. Hamilton*, __ F.Supp.3d __, 2020
 17 WL 1323036, at *2 (E.D.N.Y. Mar. 20, 2020); *United States v. McKnight*, Case No. CR 18-16, 2020
 18 WL 1872412, at *2 (W.D. Wash. Apr. 15, 2020) quoting *Boatwright*, 2020 WL 1639855, at * 4; see
 19 also *United States v. Scarpa*, 815 F.Supp. 88 (E.D.N.Y. 1993) (permitting the defendant’s release
 20 under the 24-hour guard of the U.S. Marshal Service at his own expense because of traumatic
 21 gunshot injury and terminal AIDS diagnosis and correctional authorities could no longer manage his
 22 medical conditions); *United States v. Cordero Caraballo*, 185 F.Supp. 2d 143, 144-47 (D.P.R. 2002)
 23 (ordering release of defendant who sustained multiple gunshot wounds, was partially paralyzed,
 24 could not walk, lost some arm function, who required the supervision of 4-5 contracted security
 25 guards on a daily basis and Bureau of Prisons could not provide required medical care).

26 While it is true that the Court’s determination under § 3142(i) is discretionary, the Court’s
 27 discretion is not without bounds. Among the reasons the courts generally consider for temporary
 28 release based on § 3142(i) are: (1) time and opportunity the defendant has to prepare for the trial and

1 to participate in his defense; (2) the complexity of the case and volume of information; and, (3)
 2 expense and inconvenience associated with preparing while incarcerated. *United States v. Cecrle*,
 3 Case No. 2:12-CR-400, 2014 WL 31674, at *4 (D. Nev. Jan. 3, 2014). None of these reasons are
 4 argued here. Instead, Defendant argues family members are ill, one of whom, Defendant's daughter,
 5 will have childhood surgery, and the other of whom, his grandmother, is on life support. The surgery
 6 is alleged to be scheduled at UMC Hospital where Defendant also alleges his grandmother is
 7 presently located. No evidence supporting either circumstance prompting Defendant's request was
 8 provided by Defendant.

9 This is the fourth time Defendant has sought release from custody, albeit on this occasion
 10 the request is for temporary release for an unspecified length of time. On September 5, 2018, the
 11 Court first considered Defendant's pretrial release. ECF No. 5. Magistrate Judge George Foley
 12 (Ret.) detained Defendant noting that (1) Defendant committed some of the offenses on which he is
 13 currently indicted while on parole from state charges; (2) Defendant's criminal history included
 14 assaults of persons one of whom was a peace officer, and (3) the allegations in the present indictment
 15 are serious involving the alleged illegal acquisition of numerous firearms. Judge Foley concluded
 16 that there were no conditions or combination of conditions of release that could be fashioned that
 17 would reasonably assure the safety of the community.

18 On December 17, 2019, Defendant filed his first motion to reopen detention. ECF No. 66.
 19 In preparation for that hearing, the Court reviewed the original proceedings leading to detention and
 20 found that Defendant presented no information that was not known to Defendant at the time of his
 21 original hearing and, therefore, the Motion to Reopen Detention was denied. ECF No. 70. On March
 22 4, 2020, Defendant again moved to reopen detention (ECF No. 75). This motion was heard on May
 23 18, 2020. ECF No. 81. At that hearing, the Court reviewed at length the basis for Judge Foley's
 24 original order of detention, explained the basis for the Court's finding that a single error regarding
 25 the date Defendant's parole ended was both something Defendant knew or should have known at
 26 the time of the original detention hearing; and, even if this error was not known to Defendant at that
 27 time, this fact was not material and would have changed the reasoning underlying Judge Foley's
 28 original determination regarding detention. *Id.* The timing of the events alleged in the indictment

1 and the fact that Defendant was alleged to have engaged in ten counts of illegal acquisition of a
 2 firearm, including handguns and rifles, was unchanged. *Id.* As such there was no basis to reopen
 3 detention and Defendant's Motion to Reopen Detention was again denied. *Id.*

4 Again, the Court understands that Defendant does not seek to reopen detention through his
 5 presently pending Motion. But, as previously stated by the U.S. District Court for the District of
 6 Nevada, "it cannot be the case that requests for temporary release under § 3142(i) [should] be
 7 analyzed in a vacuum. Despite the dearth of guidance in this regard, it appears that, in considering
 8 the propriety of temporary release, the court would need to balance the reasons advanced for such
 9 release against the risks that were previously identified and resulted in an order of detention." *United*
 10 *States v. Cox*, 449 F.Supp.3d 958, 962 (D. Nev. 2020). Thus, here, even though Defendant seeks
 11 temporary release to be with family members, the history of Defendant's original detention and
 12 subsequent attempts to be released are considered by the Court.

13 The concerns expressed regarding Defendant's alleged currently pending criminal activity
 14 have not changed. The indictment includes ten counts of illegal acquisition of a firearm, including
 15 handguns and rifles and, if proven at trial, at least some of these offenses occurred while Defendant
 16 was on probation from state law crimes for which he served a lengthy sentence. Further, Defendant's
 17 criminal history has not changed. These grounds for Defendant's original detention weigh heavily
 18 against temporary release. Moreover, Defendant does not state whether or how he would remain in
 19 his mother's custody while at UMC Hospital when visiting his grandmother or presumably waiting
 20 during his daughter's surgery. Defendant does not state that his mother has the means to transport
 21 him to and from the hospital or that she would remain with him throughout the time Defendant was
 22 released and at the hospital. Defendant does not indicate whether he can visit his grandmother on
 23 the same day that he is at the hospital for his daughter or whether his mother would transport him
 24 back and forth to the United States Courthouse from which he must be released and to which he
 25 must be returned to custody.

26 Given the lack of specificity provided by Defendant regarding the length of release he seeks,
 27 any evidence to support his claim that his grandmother is on life support at UMC (albeit the Court
 28 presumes this representation is accurate), whether he is able to visit his grandmother on the same

1 date his daughter's surgery is scheduled, whether his mother will retrieve him from and return him
2 to the custody of the U.S. Marshal Service at the United States Courthouse, and whether Defendant's
3 mother will remain with him while he is at UMC, the Court is left with strong concerns regarding
4 temporary release. The Court is not without sympathy for Defendant's desire to be present during
5 his daughter's adenoid surgery or his desire to visit his grandmother. However, these events are not
6 so compelling as to warrant the application of the sparingly granted temporary release Defendant
7 seeks.

8 The Court previously identified the reasons why Defendant presents a danger to the
9 community. Balancing those reasons against the facts Defendant presents, the Court finds Defendant
10 fails to carry his burden of establishing compelling reasons for his temporary release under 18 U.S.
11 C. § 3141(i).

12 **III. Order**

13 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Temporary Release
14 for Defendant to Attend Surgery and Visit Grandmother (ECF No. 94) is DENIED.

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16 DATED this 3rd day of November, 2020.

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ELAYNA J. YOUCRAH
UNITED STATES MAGISTRATE JUDGE

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